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TRADE SUMMARY

In 1999, the U.S. trade deficit with Ecuador was \$894 million, an increase of \$826 million from the U.S. trade deficit of \$69 million in 1998. U.S. merchandise exports to Ecuador were approximately \$920 million, a decrease of \$766 million (45.4 percent) from the level of U.S. exports to Ecuador in 1998. Ecuador was the United States' 53rd largest export market in 1999. U.S. imports from Ecuador were about \$1.8 billion in 1999, an increase of \$59 million (3.4 percent) from the level of imports in 1998.

The stock of U.S. Foreign Direct Investment (FDI) in Ecuador in 1998 was \$952 million, an increase of 13.6 percent from the level of U.S. FDI in 1997. U.S. FDI in Ecuador is concentrated largely in the petroleum, manufacturing, and wholesale sectors.

IMPORT POLICIES

Tariffs

When it joined the WTO in January 1996, Ecuador bound most of its tariff rates at 30 percent or less. Ecuador's average applied tariff rate is about 13 percent *ad valorem*. Since February 1995, Ecuador has applied a Common External Tariff (CET) with two of its Andean Pact partners, Colombia, and Venezuela. The CET has a four-tiered structure with levels of five percent for most raw materials and capital goods, 10 or 15 percent for intermediate goods, and 20 percent for most consumer goods. Ecuador harmonized its tariff schedule with the CET but took numerous exceptions in order to maintain lower tariff rates on capital goods and industrial inputs. Agricultural inputs and equipment are imported duty-free. In February 1999, the Government of Ecuador imposed additional temporary surcharges on imports to raise additional revenues. Given Ecuador's continuing fiscal problems, the surcharges could be extended indefinitely.

Non-tariff Measures

Ecuador appears to have failed to meet deadlines for fulfilling some of its WTO obligations to eliminate remaining non-tariff barriers. Prior authorization for certain goods is required before the central bank can issue an import license. For instance, the superintendency of telecommunications must authorize the import of telecommunications equipment for standards purposes. In spite of Ecuador's WTO accession commitment not to impose arbitrary and quantitative restrictions on agricultural imports, the Ministry of Agriculture often denies the issuance of import permits, apparently to protect local producers. The products most affected by this policy include frozen chicken parts, turkeys and, to a lesser extent, apples and fresh fruit. Import licenses require two signatures, one from the Ecuadorian Animal and Plant Health Inspection Service (SESA) and one from the Agriculture Ministry's Under Secretary of Policy and Investment. The Government of Ecuador claims its import procedures are not designed to delay imports and that the Under Secretary's signature is necessary to ensure that administrative import procedures are followed. However, the requirement for two approvals constitutes a non-tariff barrier that adversely affects U.S. exporters.

At present, 138 agricultural products, including wheat, white and yellow corn, rice, soybeans, soya and palm oil, barley, sugar, chicken parts, dairy products, and pork meat, are subject to a variable import tariff or price band system. Under this system, the *ad valorem* CET rates are adjusted according to the relationship between "marker" commodity reference prices and established floor and ceiling prices. The marker commodity reference prices are issued every other week by the Andean Community secretariat. Upon accession to the WTO, Ecuador bound its tariffs plus price bands on these commodities between 20 and 95 percent. All price bands are to be phased out by 2001, but no steps have been taken to comply with the commitments. Meanwhile, there have been reports that the customs authorities do not always accept the maximum tariff rates on products such as turkey meat and demand payments above WTO bound tariffs.

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Through tariff-rate quotas (TRQs), Ecuador has agreed to provide minimum market access at nonrestrictive tariff rates while providing a measure of protection for import sensitive commodities. Except for wheat, corn, barley and soybeans, the Government of Ecuador has yet to implement the TRQ system. Tariff rates of 19 to 45 percent are used for seventeen agricultural products, mainly wheat, corn, chicken parts, turkey, powdered milk and soybean meal.

Ecuador also continues to impose certain formal and informal quantitative restrictions that appear to violate its WTO obligations. Ecuador apparently has failed to meet its WTO commitment to lift bans on the import of used motor vehicles, tires and clothing by July 1, 1996.

Pre-shipment inspection by an authorized inspection company (both before shipment and after specific export documentation has been completed at the intended destination) results in delays far exceeding the time saved in customs clearance. Customs authorities sometimes perform spot-checking, causing even further delays. This generally adds six to eight weeks to the date when merchandise reaches the retailer. Such practices make U.S. exporters less competitive than local suppliers.

The Government of Ecuador apparently has not complied with its WTO accession commitment to equalize the application of excise taxes between imported and domestic products. Excise taxes are levied on all liquor (26 percent), beer (30 percent), soft drinks (10 percent), cigarettes (75 percent), motor vehicles (5 percent) and aircraft (10 percent). Since excise taxes on imports are calculated on CIF values, the effective rate is higher for imports than for domestic products.

In a December 1999, the Ministry of Agriculture, through Ecuador's animal plant health inspection service (SESA), issued a new requirement that all importers must present a certificate that imported agricultural products (plants, animals, their products or byproducts)

have not been produced using modern biotechnology.

STANDARDS, TESTING, LABELING AND CERTIFICATION

National standards are set by the Ecuadorian Norms Institute (INEN) of the Ministry of Commerce and generally follow international standards. Ecuador committed itself in its WTO accession protocol to conform with the WTO Agreement on Technical Barriers to Trade. According to Ecuadorian importers, bureaucratic procedures required to obtain clearance for imports have recently improved, but still appear to discriminate against foreign products. In 1998, Ecuador implemented a new law to eliminate some excessive requirements, such as notarization.

Ecuador has not yet fulfilled its 1995 bilateral commitment to the United States to accept U.S. certificates of free sale as the basis for sanitary registrations. To do so, the health code must be amended. However, to date, no steps have been taken to implement this commitment. The Ministry of Agriculture is responsible for administering Ecuador's zoosanitary and phytosanitary import controls. Although Ecuador made a commitment in its WTO accession to comply with the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS), denials of SPS certification often appear to lack a scientific basis and have been used in a discriminatory fashion to block the import of U.S. products that compete with Ecuadorian production.

The Izquierda Perez National Hygiene Institute (INHIP) and accredited public and private laboratories conduct tests on consumer products that are required to obtain a sanitary registration from the Ministry of Health. Sanitary registrations are required for imported, as well as domestic, processed foods, cosmetics, pesticides, pharmaceuticals and syringes, as well as some other consumer goods. Corruption and inefficiency in the sanitary registration process has delayed and even blocked the entry of some imports from the United States.

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GOVERNMENT PROCUREMENT

Government procurement is regulated by the 1990 public contracting law, although the government is considering introducing new legislation. In some instances, the military is not required to use this law for its purchases. Foreign bidders must be legally represented in Ecuador. There is no legal requirement to discriminate against U.S. or other foreign suppliers. Bidding for government contracts can be cumbersome and insufficiently transparent. Ecuador is not a signatory to the WTO Agreement on Government Procurement.

EXPORT SUBSIDIES

The Government of Ecuador has created a semi-independent agency, Corpei, to promote Ecuadorian exports. Using a World Bank loan, Corpei offers matching grants to exporters to help fund certain expenses, including international promotion events and export certifications. The maximum individual grant is \$50,000. Corpei also subsidizes export credit insurance.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

In 1998, the Ecuadorian Congress passed, and the President signed, a comprehensive law significantly improving the legal basis for protecting intellectual property, including patents, trademarks and copyrights.

The intellectual property law provides significantly greater protection for intellectual property, and enforcement copyrights has improved. Still, it can be difficult to obtain adequate and effective protection given the remaining shortcomings in the legal system. In 1999, USTR recognized the improvement made by the Government of Ecuador by moving Ecuador from the "Priority Watch List" to the "Watch List" under the Special 301 provision of the 1988 Trade Act. The United States continues to pursue its intellectual property concerns with Ecuador, including issuance of scores of pending (transitional) "pipeline"

pharmaceutical patent applications and the continued judicial application of the discriminatory 1976 Agents and Distributors Protection Law (Dealers' Act).

Ecuador's current intellectual property regime is provided for under its Intellectual Property Rights (IPR) Law, Andean Pact Decisions 344, 345 and 351, and its public commitment to apply the WTO TRIPS Agreement from the date of its accession to the WTO. Ecuador is a member of the World Intellectual Property Organization (WIPO). Ecuador has ratified the Berne Convention for the Protection of Literary and Artistic Works and the Geneva Phonogram Convention, but not the Paris Convention for the Protection of Industrial Property.

In October 1993, Ecuador and the United States signed the bilateral Intellectual Property Rights Agreement (IPRA) that mandates full protection for copyrights, trademarks, patents, satellite signals, computer software, integrated circuit layout designs and trade secrets. However, the IPRA has not been ratified by the Ecuadorian Congress. The IPRA obligates Ecuador to establish criminal and border enforcement systems similar to those required under the TRIPS Agreement. While many of the areas covered by the IPRA have been addressed by the 1998 IPR law, the IPRA also calls for pharmaceutical pipeline patent protection.

In response to a November 1996 decision by the Andean Pact Tribunal, Ecuador repealed its implementing regulations for Andean Pact Decision 344 on industrial property, which included provisions for pipeline protection for previously unpatentable products. In December 1996, another decree re-established the National Directorate of Industrial Property (DNPI) as the competent patent and trademark authority and authorized the DNPI only to administer Decision 344 as written. In mid-1998, the Government of Ecuador issued twelve pipeline patents, but declined to take action on more than 140 other pipeline applications, citing, inter alia, Andean Community prohibitions and its intention to abolish the DNPI. In 1999, the Andean Community imposed sanctions on Ecuador for

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issuing the twelve pipeline patents, despite their having been issued pursuant to the IPRA.

Before its September 1997 prospective repeal, the Dealers' Act prevented U.S. and other foreign suppliers from terminating distributorship contracts without mutual consent and judicial approval, even if there was a termination clause in the contract that allowed either party to unilaterally terminate the contract. The act has continued to form the basis for judicial decisions involving contracts signed before the repeal and for cases in the judicial system before the repeal. As of the date of this report, several court cases against U.S. firms remain pending, with large potential claims that bear no relation to alleged damages.

Despite improvements, enforcement against intellectual property infringement remains a serious problem in Ecuador. The national police and the customs service are responsible for carrying out IPR enforcement orders, but there has sometimes been difficulty getting court orders enforced. There is a widespread local trade in pirated audio and video recordings, computer software and counterfeit activity regarding brand name apparel. Local registration of unauthorized copies of well-known trademarks has been reduced. Some local pharmaceutical companies produce or import pirated drugs and have sought to block improvements in patent protection.

Patents and Trademarks

The new IPR law provides an improved legal basis for protecting patents, trademarks, and trade secrets. However, concerns remain with such provisions as the lack of pipeline protection, working requirements for patents, compulsory licensing and ambiguities surrounding protection for test data.

Copyrights

The IPR law protects printed and recorded works for the life of the author plus 70 years. Corporations may protect works for 70 years from production date. The copyright law covers

software and satellite signals. Semiconductor chip layouts are specifically protected.

SERVICES BARRIERS

Ecuador has ratified the WTO Agreement on Financial Services. The 1993 equity markets law and the 1994 general financial institutions law established open markets in financial services and provided for national treatment. Foreign professionals are subject to national licensing legislation, and accountants must be certified by the superintendent of banks. Foreign insurance companies may not present offers on government tenders.

Telecommunications services are reserved to the state, but foreign companies enjoy national treatment in providing services not monopolized by the state and will be invited to participate in the planned partial privatization of the two state telephone companies in 2000 or 2001. In the WTO negotiations on basic telecommunications services, Ecuador made commitments for domestic cellular services, but did not adopt commitments for other domestic and international services. It was one of the few countries that chose to make market access commitments without reinforcing regulatory commitments.

INVESTMENT BARRIERS

Ecuador's foreign investment policy is governed largely by the national implementing legislation for Andean Pact Decisions 291 and 292 of 1991 and 1993, respectively. Foreign investors are accorded the same rights of establishment as Ecuadorian private investors, may own up to 100 percent of enterprises in most sectors without prior government approval, and face the same tax regime. There are no controls or limits on transfers of profits or capital, and foreign exchange is readily available. The U.S.-Ecuador Bilateral Investment Treaty (BIT) entered into force in May 1997 and includes guarantees regarding national and most-favored-nation treatment, prompt, adequate and effective compensation for expropriation, financial transfers, and access to international arbitration.

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Under the Andean Community Common Automotive Policy, Venezuela, Ecuador and Colombia imposed local content requirements in the automotive assembly industry in order to qualify for reduced duties on imports. Such requirements are prohibited by Agreement on Trade-Related Investment Measures (TRIMS). Under this Agreement, Ecuador was obligated to eliminate TRIMS by the year 2000. The latest Andean Automotive Policy Council determined in December 1999 that it would not eliminate all local content requirements, but instead has decided to increase at least one requirement gradually to 34 percent by the year 2006. This revised automotive policy may be inconsistent with Ecuador's WTO obligations under the TRIMS Agreement. The United States is working in the WTO to ensure that WTO members meet these obligations.

Certain sectors of Ecuador's economy are reserved to the state, although the scope for private sector participation, both foreign and domestic, is increasing. All foreign investment in petroleum exploration and development in Ecuador must be carried out under a contract with the state oil company. However, the government plans to attract increased foreign investment in the telecommunications, electricity, and oil sectors through privatization and new legislation. Foreign investment in domestic fishing operations, with exceptions, is limited to 49 percent of equity. Foreign companies cannot own more than 25 percent equity in broadcast stations. Foreign investors must obtain armed forces approval to obtain mining rights in zones adjacent to international boundaries. Foreigners are prohibited from owning land on the frontier or coast.

Appropriate compensation for expropriation is provided for in Ecuadorian law, but is often difficult to obtain. The extent to which foreign and domestic investors and lenders receive prompt, adequate and effective compensation is largely related to the particular judicial process underway. It can be difficult to enforce property and concession rights, particularly in agriculture and mining sectors. Oil, telecommunications, and other foreign companies often have had

difficulties resolving contract issues with the state. Although Ecuador deposited its instrument of accession to the International Center for the Settlement of Investment Disputes (ICSID), the Government maintains that congressional ratification is necessary to make that membership effective.